



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR - 9 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kenneth F. Boehm, Chairman
National Legal and Policy Center
107 Park Washington Court
Falls Church, VA 22046

RE: MUR 5408

Dear Mr. Boehm:

This is in reference to the complaint you filed with the Federal Election Commission on February 9, 2004, concerning Alfred C. Sharpton, et al. The Commission found that there was reason to believe Reverend Alfred C. Sharpton, and Sharpton 2004 and Andrew A. Rivera, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended. In addition, the Commission found that National Action Network, Inc. and Alfred C. Sharpton, as President, violated 2 U.S.C. § 441b. As such, the Commission conducted an investigation in this matter.

On April 2, 2009, a conciliation agreement signed by Reverend Alfred C. Sharpton, and Sharpton 2004 and Andrew A. Rivera, in his official capacity as treasurer, was accepted by the Commission. Also on this date, the Commission accepted a conciliation agreement signed by National Action Network, Inc. and Alfred C. Sharpton, as President. Copies of the conciliation agreements are enclosed for your information.


In addition, the Commission previously found that there was reason to believe Roger Stone, LaVan Hawkins, and Wendy Hawkins violated 2 U.S.C. § 441a(a)(1)(A). However, after considering the circumstances of this matter, the Commission determined to take no further action as to these respondents, and closed the file as it pertained to them on December 3, 2008. The Factual and Legal Analyses, which more fully explain the Commission's findings concerning these respondents, are enclosed.

Accordingly, the Commission closed the entire file in this matter on April 2, 2009. Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

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If you have any questions, please contact me at (202) 694-1650.

Sincerely,


Camilla Jackson Jones
Attorney

Enclosures
Conciliation Agreements
Factual and Legal Analyses

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Reverend Alfred C. Sharpton and Sharpton 2004)
 and Andrew Rivera, in his official capacity as Treasurer)

MUR 5408

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COUNSEL
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CONCILIATION AGREEMENT

This matter was initiated by a complaint as later supplemented by information the Federal Election Commission ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Reverend Alfred C. Sharpton and his presidential campaign committee, Sharpton 2004 and Andrew Rivera, in his official capacity as Treasurer (f/k/a Rev. Al Sharpton Presidential Exploratory Committee) (the "Committee" or "Sharpton 2004"), violated various provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), including 2 U.S.C. §§ 434(b), 441a(f) and 441b by failing to accurately report all receipts and expenditures, and by receiving excessive and prohibited in-kind contributions.

NOW, THEREFORE, the Commission and the Reverend Alfred C. Sharpton and Sharpton 2004 and Andrew Rivera, in his official capacity as treasurer (collectively "Respondents"), having duly participated in informal methods of conciliation prior to a finding of probable cause to believe, pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:

Background

1. Reverend Alfred C. Sharpton was a candidate for the Democratic Party's nomination for President of the United States in 2004. Although Sharpton did not file a Statement of Candidacy on April 29, 2003, he actually was a candidate no later than October 2002. See MUR 5363 Conciliation Agreement ¶¶ V.1-3. Sharpton is an entrepreneur who derives his living from paid speaking engagements, his radio and television talk shows, and from his work as an activist. Although he has never held public office, Sharpton has been a federal candidate on three prior occasions, having run in New York's Democratic primaries for the United States Senate in 1978, 1992 and 1994.

2. Sharpton 2004 and Andrew Rivera, in his official capacity as treasurer (f/k/a Rev. Al Sharpton Presidential Exploratory Committee) was the principal campaign committee for Sharpton.

3. National Action Network ("NAN") is a domestic non-profit corporation founded by Sharpton in 1991 and incorporated in the State of New York in 1994. The organization describes itself as being focused on grassroots activity designed to highlight civil and human rights issues throughout the country. Sharpton has served as President of NAN since its inception and traveled extensively for NAN-related activities in 2002-2004.

4. Rev-Als Production, Inc. and Sharpton Media Group LLC, are two unincorporated wholly owned, sole proprietorships founded by Sharpton. Both business entities serve as vehicles for Sharpton's entrepreneurial activities and have no staff, maintain no overhead, and pay all of their profits to Sharpton in the form of dividends, which he claims as income in his personal tax filings with the Internal Revenue Service.

5. Archer Group, Inc. is a San Francisco-based political consulting firm that originally entered into a contract with NAN in October 2003 to develop, write and

implement a voter registration plan and to support NAN in scheduling, logistics and voter registration activity. In November 2003, Archer Group consultants began working for Sharpton 2004, with one executive, Michael Pitts, later being named as the Deputy Campaign Manager.

6. LaVan Hawkins was a prominent businessman and owner of the Hawkins Food Group, Inc., a Detroit based corporation.

Applicable Law

7. The Act requires all political committees to file periodic reports of the committee's receipts and disbursements with the Commission. *See* 2 U.S.C. § 434(a)(1). In the case of committees that the authorized committees of a candidate for Federal office, these reports shall include, *inter alia*, the amount of cash on hand at the beginning of the reporting period, *see* 2 U.S.C. § 434(b)(1); the total amounts of the committee's receipts for the reporting period and for the calendar year to date, *see* 2 U.S.C. § 434(b)(2); and the total amounts of the committee's disbursements for the reporting period and the calendar year to date. *See* 2 U.S.C. § 434(b)(4). In-kind contributions shall be reported both as contributions and as expenditures. 11 C.F.R. § 104.13(c).

8. During the 2004 election cycle, the Act limited contributions to any candidate for Federal office or his authorized political committee, in the aggregate, to \$2,000. *See* 2 U.S.C. § 441a(a)(1). Further, the Act states that no candidate or political committee shall knowingly accept any contribution in violation of the limitations imposed under this section. *See* 2 U.S.C. § 441a(f).

9. The Act provides that it is unlawful to make or receive contributions from a corporation in connection with an election for federal office. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(a)-(b). Corporate contributions or expenditures include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of

value . . . to any candidate, campaign committee, or political party or organization, or any other person” in connection with any election to any political office. 2 U.S.C. §§ 441b(a) and (b)(2); 11 C.F.R. § 114.1(a)(1). Any candidate who receives a contribution for use in connection with his campaign shall be considered as having received the contribution as an agent of the authorized committee for his candidacy. 2 U.S.C. § 432(e)(2).

10. The Act defines the term “contribution” as including “anything of value made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(8)(A)(i).

11. The Act defines the term “expenditure” as including “anything of value . . . made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(9)(A)(i).

12. Expenditures for travel relating to the campaign of a candidate receiving matching funds and seeking nomination for election to the office of President, shall be qualified campaign expenses and be reported by the candidate’s authorized committee as expenditures. 11 C.F.R. § 9034.7(a). If the trip is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(b)(1). If a trip includes campaign and non-campaign-related stop, the campaign-related portion of the trip shall be a qualified campaign expense and a reportable expenditure. 11 C.F.R. § 9034.7(b)(2). A stop is considered campaign-related if campaign activity, other than incidental contact, is conducted at the stop. *See id.*

Contributions Arising from American Express Charges and Payments

13. During his candidacy, Sharpton traveled extensively, and routinely mixed travel that was for both the Committee and NAN. The costs of this dual campaign and non-campaign travel should have been allocated between the Committee and NAN, pursuant to the Commission regulations, so that the Committee would pay for all campaign travel. However, Sharpton 2004 kept poor records of its activities and expenditures, which often resulted in NAN or other entities paying for travel expenses incurred by the campaign.

14. It was the practice to charge all travel expenses to Sharpton's American Express charge card. The card was then paid by using multiple accounts owned by Sharpton, NAN and/or the Committee. However, there were no ledgers kept to record the check numbers, the amounts, what loans or activities the checks were meant to pay or reimburse, for whom the payments or reimbursements were meant, and/or whether the checks were meant to be direct payments to the American Express card or reimbursements for payments already made. All of the payments that the Committee made to pay for campaign-related expenses charged on the American Express card were remitted in the form of checks or electronic transfers drawn on the Committee's account and paid to Sharpton.

15. Concern was expressed within the Committee about the problem of commingling expenses, and efforts were made to implement policies and procedures to ensure that the Committee properly segregated and allocated expenses between NAN and the Committee. In fact, consultants who worked with both NAN and Sharpton 2004 were instructed to develop an invoice to be used for allocating expenditures for shared events between the NAN and the Committee. Yet, there was a breakdown at the administrative level in the implementation of those procedures, and the adoption of proper recordkeeping and use of invoices by staff at both organizations continued to be a problem.

16. As a consequence of the Committee's poor recordkeeping, coupled with the practice of charging Committee, NAN and other expenses to Sharpton's personal American Express card and later paying the American Express account with monies drawn from various bank accounts, NAN and Sharpton's business entities often paid for campaign expenses that were not reimbursed or reported to the Commission.

17. The Commission determined that by applying the proper allocations to the travel expenses, the Committee incurred \$509,188 in campaign-related expenses on Sharpton's American Express card, but had made payments on the card from its bank accounts in amounts totaling only \$121,996. Thus, \$387,192 was paid to Sharpton's American Express account for campaign expenses from other sources.

18. The Commission concluded that NAN made payments totaling \$107,615 to the American Express card for Committee expenses, in violation of the prohibition against corporate contributions set forth in 2 U.S.C. § 441b.

19. Additionally, the Commission concluded that Sharpton's sole proprietorships, Rev-Als Production and Sharpton Media LLC, paid for the portion of campaign travel and expenses charged to the American Express card. Specifically, the Commission determined that Rev-Als Production paid \$209,577 and Sharpton Media LLC paid \$5,000 for campaign expenses. Finally, \$65,000 in campaign-related travel and expenses charged to the American Express card was paid by unknown sources. All of these in-kind contributions made through the payments to American Express, should have been disclosed to the public in the Committee's disclosure reports as contributions and expenditures.

Payments to Vendors and Consultants

20. Although contrary to their original intent, NAN effectively subsidized the Sharpton 2004 presidential campaign by paying for vendors and consultants who performed work to benefit the Committee. Though originally retained by NAN in October 2003 to develop a voter registration plan and to conduct NAN's scheduling and advance logistics, the Archer Group began working exclusively for the Committee in November 2003. The work the Archer Group performed for the Committee was the continuation of work paid by NAN. Documents produced by the Committee show that Archer Group staff handled campaign travel arrangements, including travel reservations for Sharpton, during the October 2003 time period that the Archer Group was supposedly working exclusively for NAN.

21. The Commission determined that the Committee received approximately \$73,500 from NAN for in-kind contributions, which consisted of payments to consultants and vendors for campaign-related work, including scheduling, logistics and voter registration services, fundraising and travel.

22. NAN made impermissible in-kind contributions to the Committee, in violation of 2 U.S.C. § 441b, totaling \$181,115, which includes \$107,615 in payments to the American Express account and \$73,500 in direct payments to vendors and consultants.

23. Moreover, these contributions were not disclosed to the public in the Committee's disclosure reports in violation of 2 U.S.C. § 434(b).